IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12049 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURYODAY POLYSTER PVT LTD.

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioners

MR MUKESH R SHAH for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 13/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Mr. Mihir Joshi for the petitioners. Mr.

Mukesh R. Shah for the respondents. Rule. Mr. Mukesh R. Shah waives the service of the Rule on behalf of respondents No. 1 to 3. At the request of learned counsel for both the sides the matter was taken up for final hearing. The Appeals No. E/2002 and 2003, one by the company and the other by the Director of the Company, were filed against the order dated 25th of February 1999 passed by the Commissioner of Central Excise, Surat-I. In these appeals, applications for Stay No. 1713 and 1714 were filed. These two applications for stay in respect of two appeals were decided by the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai, which will hereinafter be referred to as "CEGAT" by an order dated 16th of May 2000. The CEGAT has observed in Para 8 that an amount of Rs. 10,00,000/- had already been deposited and a direction was issued to deposit the further sum of Rs. 21,09,926/and a deposit of Rs. 5,00,000/- towards the penalty imposed on the company. These deposits were to be made within 6 weeks of the receipt of the said order. The compliance of the order dated 16th May 2000 was to be reported by 29th of May 2000. However, no further deposits were made and instead separate Miscellaneous Applications No. 501 and 502 of 2000 were moved on 3rd July 2000 seeking modification of the stay order dated 16th May 2000 and an amendment seeking additional grounds in the appeal was sought for. Both these applications along with the main appeals were decided on 10th of October 2000. We find that the order dated 10th October 2000 is a composite order deciding the appeals as well as the two applications referred to hereinabove. The appeals were not decided on merits but were dismissed on the ground that the petitioners had failed to deposit the amount as had been ordered.

2. Mr. Mihir Joshi, learned counsel for the petitioners has raised the grievance that the modification applications were rejected on the ground that the grounds on which the modification was sought were not there in the appeals and in Para 3 it has been categorically mentioned that these grounds were not raised in the appeal. In fact, the necessity to file the amendment application arose only because these grounds were not there in the appeal and therefore the correct course for the CEGAT was to first decide the amendment application and then the consequences would have followed and had the amendment been allowed the grounds would have been available to the petitioners for modification of the order and had the order been modified in their favour, perhaps the application could have been filed for deposit of rest of the amount. The factual aspect as pointed out

by the learned counsel for the petitioner is not disputed on behalf of the respondents before us. In this view of the matter, we find that this is a fit case for remand. Accordingly, the impugned order dated 10th October 2000 passed by the CEGAT is hereby quashed and set aside and the matter is remanded back with a direction that the application for amendment shall be first decided and subject to the order which will be passed in the amendment application, the petitioner shall be allowed to raise those grounds in the application for modification, and the modification application shall be heard and decided in accordance with law, and subject to the decision of such modification application, the appeal shall also be heard and decided on merits. The CEGAT shall take up the remanded matter and the same shall be decided within a period of four weeks from the date of receipt of the certified copy of this order. It is further ordered that till the remanded proceedings are over and orders are passed therein by the CEGAT, the respondents shall not take any coercive steps against the petitioners for recovery of the amount in question. This Special Civil Application is partly allowed as above and the Rule is made absolute accordingly. In the facts and circumstances, no order as to costs.

[M.R. Calla, J.]

rmr. [N.G. Nandi, J.]